

Disqualification: Discharge for Misconduct and Voluntary Quit*

EDWIN R. TEPLE†

The framers of the unemployment insurance program in this country determined that not all unemployed individuals should receive benefits. The State laws uniformly require a minimum amount of earnings within the established base period in order to test the worker's attachment to the labor market.¹ To make certain that his attachment is current and genuine, there is also a provision that he must be able to work and available for work.²

Notwithstanding the worker's attachment to the labor market, moreover, he still will not qualify if his unemployment is the result of his being on strike.³ Whether it is to preserve the neutrality of

* The views expressed herein are entirely those of the author and are not intended to reflect in any way the official viewpoint of the Federal Security Agency. The author wishes to acknowledge the helpfulness of material on this subject prepared and made available by Laurence A. Price, Chief Counsel of the Michigan Unemployment Compensation Commission.

† Assistant Regional Attorney, Region IV, Federal Security Agency.

¹ As of January 1, 1949, 26 States required earnings equal to aspecified multiple of the weekly benefit amount and 4 States used a weighted table with varying multiples thereof. Eighteen States had a flat qualifying wage ranging from \$100 to \$300, with Ohio falling within this group by requiring a fixed amount of base period earnings and a flat number of weeks of employment (Ohio Code, sec. 1345-6a(1)—which, under the 1949 amendments, specifies earnings of \$240 and 14 weeks of employment). Michigan and Wisconsin specified that an individual must have worked a fixed number of weeks at a minimum weekly wage, and Utah required base period wages equal to at least 150 per cent of the individual's high quarter wages and 14 per cent of the average State-wide wage. See, *Comparison of State Unemployment Insurance Laws* (1948 ed.), published by the Federal Security Agency's Bureau of Employment Security, pp. 37-41. Attachment to the labor market is one of the earmarks of an insurance system as compared with the public assistance programs in this country, where need is the principal criterion, or the one-time "dole" in England. Those who would discredit the unemployment insurance system in this country still insist on referring to it as a dole. Of course, there is an assumed need at the base of any social insurance system, and it is this which justifies, or at least explains, some of the otherwise illogical provisions, such as the weighting of benefit tables to provide proportionately larger payments for those in the lower income brackets and the increasingly popular family allowances.

² See, Freeman, *Availability: Active Search for Work*, p. 181; Freeman, *Able to Work and Available for Work*, 55 YALE L. J. 123 (1945).

³ The terminology varies somewhat in the different State laws, "strike," "labor dispute," and "trade dispute" all being used without much apparent difference in actual application. The typical provision imposes the disqualification whenever the unemployment is due to a stoppage of work which exists

the State in such difficult and controversial matters, or merely because a strike is considered a form of voluntary action, anyone connected therewith is disqualified at least for a time.⁴

Having cleared these hurdles successfully, the prospective claimant may still fall flat on his face, figuratively speaking, if a job is offered to him and he turns it down, since all State laws contain disqualifications for refusing suitable work. The so-called labor standards provision, required for conformity with the Federal act,⁵ guarantees that benefits shall not be denied under the express conditions specified, but beyond this, it depends upon the provisions of the particular State law to what extent the worker

because of a labor dispute. Seven States, as of 1948, specifically exclude lockouts from the operation of the provision, and five States exclude disputes due to the employer's failure to conform to the provisions of a labor contract or to wage and hour or collective bargaining legislation. Usually this disqualification applies only where the labor dispute occurs in the establishment, or as the Ohio law puts it, in the factory, establishment or other premises, where the claimant was employed, although Idaho omits this provision altogether. Connecticut includes unemployment due to the existence of a labor dispute in any establishment operated by the employer within the State, and Oregon includes a dispute at any other premises which the employer operates if the dispute makes it impossible for him to conduct work normally. Michigan disqualifies those who stop work in sympathy with strikers in another department or establishment as well as anyone indirectly unemployed because of a stoppage of work in some other department or unit. The great majority of State laws (Ohio is one of the exceptions) provide that the disqualification shall not apply if the individuals in question, and any others of the same grade or class, are not participating in the dispute, financing it, or directly interested therein. See, *Comparison of State Unemployment Insurance Laws*, pp. 67-69 (1948), published by the Federal Security Agency's Bureau of Employment Security.

⁴ In New York, the disqualification ends after 7 weeks and in Rhode Island an 8-week period is specified. Thirty-five States extend it to the termination of the work stoppage, while 14 others impose it so long as the labor dispute is in active progress, or so long as the unemployment is due thereto. *Id.* For a discussion of this disqualification, see Comment, p. 238; also, Lesser, *Labor Disputes and Unemployment Compensation*, 55 YALE L. J., 167 (1945).

⁵ Section 1603(a) (5) of the Internal Revenue Code, formerly a part of the Social Security Act, requires that State unemployment insurance laws, to qualify for tax credit for employers within the State, must contain provision that: "Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization." As a result, every State unemployment insurance law contains language which is identical, or nearly so, except that most State provisions are not limited to *new* work but provide that *no* work shall be considered suitable under the circumstances specified. In effect, the labor standards provision makes a finding of unsuitability mandatory in any case where its provisions are applicable.

may safely exercise judgment in declining any offer that is made.⁶

Finally, all State laws prescribe some disqualification for individuals who quit their jobs voluntarily⁷ or who are guilty of misconduct resulting in discharge.⁸ It is with these last two types of disqualification that this article is concerned.⁹

⁶ In addition to the mandatory minimum standards, most State laws list certain criteria which are to be considered in determining the suitability of work offered. These ordinarily include: the degree of risk to a claimant's health, safety, and morals; his physical fitness and prior training, experience and earnings; the length of his unemployment and prospects for securing work in his customary occupation; and the distance of the available work from his residence. Failure, without good cause, to apply for available suitable work when so directed by the State employment service, or to accept suitable work when offered, is the cause of disqualification in most States, although important variations in the language of this provision occur in a number of the laws. The Ohio law formerly required acceptance of any work for which the claimant was reasonably fitted, but the 1949 amendments embodied in S.B. 142 substitute the "suitable work" language along with a specific definition of the term "suitable." Ten States disqualify a worker under this provision for a specified number of weeks following the week in which the refusal occurred; thirty States postpone benefits for a variable number of weeks; and twelve States impose a disqualification for the duration of the unemployment. At least 16 of these States reduce or cancel benefit rights when this disqualification is imposed. See, *Comparison of State Unemployment Insurance Laws*, pp. 64-67 (1948), a publication of the Federal Security Agency's Bureau of Employment Security. See, also, Menard, *Refusal of Suitable Work*, 55 YALE L. J. 134 (1945).

⁷ The disqualification normally applies to any worker who voluntarily leaves his job without good cause. In 16 States, however, good cause is operative only if it is connected with the work or attributable to the employment. In 12 States the period of disqualification for voluntary leaving is a specified number of weeks; in 29 States the number of weeks is variable; and in 10 States it extends for the duration of the unemployment. In 16 States, in addition to postponing the payment of benefits, the number of weeks for which the claimant would otherwise be entitled to draw benefits is reduced. See, *Comparison of State Unemployment Insurance Laws* (1948), *supra*, pp. 57-61.

⁸ The typical provision disqualifies any individual who is discharged for misconduct connected with his work. A few States limit the provision to wilful misconduct (Connecticut and Pennsylvania), deliberate disregard of the employer's interest (Massachusetts), and failure to obey orders (Georgia). Thirty-six States postpone benefits under this provision for a variable number of weeks; and 6 States apply it for the duration of the unemployment (Florida has a double provision and falls within both of these categories). Sixteen States, in addition, cancel part or all of the claimant's benefit rights. At least 12 States have special provisions for the more reprehensible types of misconduct, such as: dishonest or criminal acts; gross, flagrant, wilful, and unlawful misconduct; forgery, larceny or embezzlement; and arson, intoxication, sabotage or dishonesty. A heavier penalty is provided in these cases. In Ohio, for instance, a claimant convicted of dishonesty in connection with his work is disqualified for the duration of his unemployment. *Id.*, at 61-64.

⁹ Some State laws contain additional disqualification provisions applicable to particular limited groups. Twenty-nine States disqualify individuals found guilty of misrepresentation in connection with their claims for benefits. Nineteen States have special disqualifications relating to unemployment due to

At the outset, it may be important to determine whether, in a given case, the worker quit or was discharged. These two disqualifications are closely related, and most State laws provide the same consequences in either event,¹⁰ but if they differ, the nature of the separation may become significant.¹¹ Moreover, the claimant must have good cause for quitting to avoid disqualification, but if it was a discharge, he can qualify for benefits unless the employer's action was the result of misconduct connected with the work.

For practical purposes, it is submitted that the question of whether the worker was fired or quit should be settled on the basis of who initiated the final separation. If the worker approached the boss and in effect said: "I'm through, finished, washed up," any subsequent conversation would appear superfluous. Of course, if the worker at that point was persuaded to stay and subsequently the boss walked over and announced that he had decided to accept the worker's resignation after all, the situation is entirely different and the shoe would appear to be on the other foot. It is immaterial that one of the parties may have provoked the other into taking the initiative,¹² but at the same time the one who actually takes the

pregnancy, while 17 have broader provisions applicable to unemployment due to marital obligations. Students receive special attention in a few States and many laws suspend or reduce benefits during weeks when income from other specified sources is being received, such as dismissal wages, workmen's compensation, or old-age and survivors insurance. *Id.* at 69-74. By the 1949 amendments, the Ohio law disqualifies anyone who advocates, or belongs to a party which advocates, the overthrow of the government by force. Am. S.B. 142.

¹⁰ In at least 29 States, the length of the disqualification period is the same. *Id.*, table 21. The Ohio law formerly imposed entirely different penalties, voluntary leaving causing a disqualification for the entire period of the unemployment together with required additional earnings, while discharge for misconduct resulted in an additional waiting period of 3 weeks with a cancellation of 6 weeks of benefits. This probably explains the low percentage of discharge cases in Ohio. Under the 1949 amendments, however, identical penalties are imposed, consisting of a 4-week postponement after the week of the quit or discharge and a cancellation of 3 weeks of benefits. Am. S.B. 142.

¹¹ Of the States which differentiate, the majority make the discharge disqualification more severe. The most common variation, however, merely raises the discretionary maximum number of weeks for which benefit payments may be postponed, and under similar circumstances, therefore, the penalty period in actual application is likely to be the same.

¹² *MacFarland v. Board of Review*, 158 Pa. Super. 418, 45 A. 2d 423 (1946). In this case, a safety engineer, in an effort to provide greater safety facilities, went beyond his jurisdiction to such an extent that he was discharged. The court held that the discharge under these circumstances could not be considered a voluntary quit so as to bring about a disqualification under the provisions of the Pennsylvania law prior to 1945, on the theory that the worker's conduct had brought about the discharge. See, also, *In re Lynch*, 148 Pa. Super. 249, 24 A. 2d 924 (1942), in which the court held that a separation could not be considered a voluntary quit where there was evidence that the worker was laid off. In *Grand Island Baking Co. v. Franz*, 4 N.W. 2d 921 (Neb. 1942), the claimant,

final step cannot conceal the true nature of what occurred by forcing or tricking the other into accepting the onus of the event.¹³

DISCHARGE FOR MISCONDUCT

Once the separation has been identified as a discharge, it becomes necessary to establish the fact that such action was the result of a particular act or acts, or a conscious omission, by the claimant. Obviously, unless it can be shown that something occurred which justified and brought about the discharge, and that the claimant was the one responsible for such occurrence, it cannot be found that the discharge was for misconduct.¹⁴

The most difficult question, of course, is determining what sort of action, or failure to act, amounts to misconduct within the meaning of the act. It goes almost without saying that the term involves more than mere inefficiency or a failure to live up to work standards set by the employer. Misconduct is defined as improper conduct or bad behavior; mismanagement; or improper acts or instances of misbehavior.¹⁵ Some element of intent or negligence approaching wantonness must ordinarily be present.¹⁶

when advised that the manager wanted to see him, quit on the assumption that he was about to be fired. Quaere, was the court correct in determining that the discharge provision was applicable?

¹³ *Chellson v. Division of Employment and Security*, 214 Minn. 332, 8 N.W. 2d 42 (1943), in which the court held that a resignation obtained under threat of withholding wages is not a voluntary quit but a discharge.

¹⁴ It is usually said that the burden of proof in this instance rests upon the employer. *Boynton Cab Co. v. Giese*, 237 Wis. 237, 296 N.W. 630 (1941); *White v. Phillips, C.C.H., U.I. Serv., Neb.*, par. 1970.01 (1940); *Allen v. U.C.C., C.C.H., U.I. Serv., Mich.*, par. 1970.03 (1948). What this actually means is that the employer is the only reliable source of information as to the reason for discharge, and he cannot complain if the facts necessary to support a denial of the claim are not forthcoming. Unemployment insurance claims are not adversary proceedings, and there is no burden of proof in the technical sense. The administrative agency has the responsibility of determining all the relevant facts, and the most that can be said of either the employer or the claimant in this connection is that one or the other, at various times, may carry the risk of non-persuasion.

¹⁵ FUNK AND WAGNALLS, *NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE*.

¹⁶ *Kempfer, Disqualification for Voluntary Leaving and Misconduct*, 55 YALE L. J. 147, 162 (1945). According to the Wisconsin Supreme Court in *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (1941), the term "is limited to conduct evincing such wilful or wanton disregard of an employer's interests, as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity,

A deliberate violation of reasonable rules or orders of an employer has frequently been held to constitute misconduct. Drinking liquor while on duty falls within this category,¹⁷ as well as reporting for work under the influence of liquor.¹⁸ Where, on several occasions, the employee has left his work without permission and without the employer's knowledge, there is said to be sufficient evidence of misconduct.¹⁹ Employers frequently have rules prohibiting solicitation during working hours, which is held to include activities designed to interest fellow employees in union membership. A deliberate violation of such a rule is considered misconduct,²⁰ but giving a union card to a fellow worker at lunch at the latter's request is a different matter.²¹

Excessive absence from work without sufficient reason may constitute misconduct,²² but remaining away for a short period usually is not considered to justify such a finding.²³

Where discharge results from some infraction of the rules governing the relationship of the employer with the union, the courts seem to agree that misconduct is not the basis for the action. A worker's expulsion from the union, for instance, is not based upon misconduct²⁴ any more than his refusal to join the union in a closed

inadvertencies, or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute."

¹⁷ *Guede v. Board of Review*, C.C.H., U.I. Serv., Pa., par. 8185 (1948). The claimant, a bartender, had previously been warned not to drink while on duty. He ignored this instruction on several occasions, and on the day of his discharge had broken some glasses, spilled several drinks, and was in no condition to operate the bar.

¹⁸ *Horak v. U.C.C.*, C.C.H., U.I. Serv., Mich., par. 1970.44 (1948).

¹⁹ *Chellson v. Div. of Employment & Security*, 214 Minn. 332, 8 N.W. 2d 42 (1943), where the employee left approximately two hours before quitting time on several Saturdays; *Gilbert Co. v. Kordorsky*, 56 A. 2d 169 (Conn., 1947), where the employee's habit of leaving early had delayed production and there was additional evidence of insubordination.

²⁰ *Bigelow v. Waselik*, 133 Conn. 304, 50 A. 2d 769 (1946).

²¹ *Urick v. Board of Review*, C.C.H., U.I. Serv., Mich., par. 1970.09 (1948). This case is on appeal to the Michigan Supreme Court.

²² *Clock Co. v. Smith*, C.C.H., U.I. Serv., Conn., par. 8213 (1948), in which the excessive absenteeism was due partly, but not entirely, to illness; *Mysliwski v. U.C.C.*, C.C.H., U.I. Serv., Mich., par. 1970.035 (1948), where the irregular attendance followed the worker's return to work after an injury. The court in the latter case explained that if the claimant was unable to work full time, he was ineligible for that reason.

²³ Being absent for two days was considered not enough in *Allen v. U.C.C.* (Mich. Cir. Ct., 1948), C.C.H., U.I. Serv., Mich., par. 1970.03. Neither was a period of four days during which the worker was absent following his vacation. *Scarlett v. Employment Security Commission*, C.C.H., U.I. Serv., Md., par. 8096 (1948).

²⁴ *Prince v. Schick*, C.C.H., U.I. Serv., Conn., par. 8205 (1948); *Marcy v. Schick*, C.C.H., U.I. Serv., Conn., par. 8206 (1948).

shop plant.²⁵ A similar conclusion was reached where the employee had failed to use the union as his bargaining agent.²⁶

Three decisions by the Supreme Court of Wisconsin point the way rather clearly insofar as performance of the job is concerned. Where a cab driver left his cab unattended and checked in short, the court held that inefficiency had been established but not misconduct.²⁷ Neither was it misconduct where the driver was involved in several accidents, in none of which a wilful disregard for the employer's interests was demonstrated.²⁸ But where a driver had six accidents in 7 months, was late several times, and was guilty of being absent without leave, of "low flagging," and numerous rule infractions, it was held that misconduct had been established.²⁹

If these principles had been applied in some of the other cases, it is at least doubtful whether the actions referred to therein would have been classified as misconduct so as to invoke the discharge disqualification.³⁰ The Wisconsin view has much to be said in its favor, both as an accurate interpretation of the statutory language and an effective means of giving the statute the liberal interpretation to which it is entitled.³¹

²⁵ *Levinson v. U.C.C., C.C.H., U.I. Serv., Mo.*, par. 1970.22 (1942).

²⁶ *Webster v. Potlatch Forests, Inc.*, 187 P. 2d 527 (Idaho, 1947).

²⁷ *Boynton Cab Co. v. Schroeder*, 237 Wis. 264, 296 N.W. 642 (1941).

²⁸ *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (1941). In this case, the driver had also failed to properly report two accidents in accordance with the employer's rules.

²⁹ *Checker Cab Co. v. Industrial Commission*, 242 Wis. 429, 8 N.W. 2d 286 (1943).

³⁰ *Kopper's Coal Co. v. Board of Review, C.C.H., U.I. Serv., W.Va.*, par. 8976.02 (1943), where the worker had refused to do outside work; *Young Spring & Wire Corp. v. Appeal Board, C.C.H., U.I. Serv., Mich.*, par. 1970.57 (1947), where a plant guard had refused to do emergency midnight guard duty; *Siminski v. Champion Spark Plug Co., C.C.H., U.I. Serv., Mich.*, par. 1970.34 (1947), where the worker had refused to agree to a change in hours and had incurred displeasure in several other ways. In *Sharkiewicz v. Cushman Chuck Co., C.C.H., U.I. Serv., Conn.*, par. 1970.051 (1942), where the claimant was discharged for leaving his machine unattended after company warnings, the machine was damaged and it was found that the claimant's action was deliberate, the court pointing out that the mere violation of a rule does not always constitute misconduct. See: *Boynton Cab Co. v. Schroeder, supra.* (driver left cab unattended).

³¹ "The purpose of the unemployment compensation act is to relieve the distress of economic insecurity due to unemployment. It was enacted in the interest of public welfare to provide for assistance to the unemployed and as such is entitled to a liberal interpretation." *Godsol v. U.C.C.*, 302 Mich. 652, 5 N.W. 2d 519 (1943). In further support of the rule of liberal construction, the Michigan court in *Copper Range Co. v. U.C.C.*, 320 Mich. 460, 31 N.W. 2d 692 (1948), said: "In the face of this legislative declaration of policy, courts are without power to deprive those entitled thereto of the benefits of the act unless they are expressly precluded therefrom by its provisions."

The misconduct, of course, must be connected with the work of the claimant according to the express language of most State laws.³² No matter how reprehensible it may be, misconduct which occurs elsewhere and has no direct or necessary connection with the worker's job is not properly a basis for disqualification. An unfounded suit brought in good faith against an employer for a statutory penalty for reduction of wages without due notice, was held not to be connected with the plaintiff's work.³³ Likewise, engaging in a strike against the employer, the purpose of which was to interrupt the employer's service to its customers, it was held that such misconduct was connected with the work even though the discharge did not take place until after the strike was terminated.³⁵

VOLUNTARY QUIT

Under the ordinary language of the voluntary quit disqualification, there are three questions to consider: (1) whether the claimant has left his job, (2) whether the leaving was voluntary and, (3) whether there was "good cause" for his leaving. In the 16 States which qualify good cause, there is the additional question of whether the good cause is attributable to the employer or connected with the work.

Leaving work, it may be pointed out, imports a complete severance of the employer-employee relationship.³⁶ In some instances, however, it is not easy to determine just when severance has occurred. Where a salesman has not made any sales for several months prior to filing his claim and there was no evidence as to the reason for such inactivity, it was considered that the relationship had been severed by the employee.³⁷ Similarly, an absence for 6 months without notice was considered a leaving,³⁸ as was an un-

³² This may be a natural qualification, even without the express statutory language. See, Kempfer, *Disqualifications for Voluntary Leaving and Misconduct*, 55 YALE L. J. 147, 162 (1945).

³³ M.F.A. Milling Co. v. Murphy, 169 S.W. 2d 929 (Mo. 1943).
drunken altercation away from the place of employment normally

³⁴ Elk River Coal & Lumber Co. v. Bd. of Review, C.C.H., U.I. Serv., W.Va., par. 8072 (1947).

³⁵ Consumers Power Co. v. Smith, C.C.H., U.I. Serv., Mich., par. 1970.513 (1941).

³⁶ Yale & Towne M'fg Co. v. Bd. of Review, 62 A. 2d 99 (Pa. Super. 1948); Kempfer, *op. cit. supra* note 32 at 154. See, Dawson v. Empl. Security Bd., C.C.H., U.I. Serv., Md., par. 8102 (1949).

³⁷ Logan-Cache Knitting Mills v. Ind. Comm., 99 Utah 1, 102 P. 2d 495 (1940).

³⁸ Michalsky v. Bd. of Review, 62 A. 2d 113 (Pa. Super. 1948). The claimant had remained in jail for 6 months rather than pay support money to his wife

reasonable extension of a leave of absence, together with a failure to keep in contact with the employer.³⁹

On the second question, where conditions are such that the claimant was impelled to leave his job and had no real choice in the matter, it may fairly be said that the leaving was involuntary. This condition is illustrated by the situation in *Fannon v. Federal Cartridge Corporation*.⁴⁰ The claimant became ill as a result of working with gunpowder and after being transferred to a job pushing heavy iron trucks loaded with shells in a temperature of 130 degrees, she finally collapsed and was sent to the hospital. The doctor advised her that she would not recover as long as she worked in the ordnance plant. With respect to these facts, the Minnesota court said: "While she intended to terminate her employment, and to this extent it may be argued that such termination was voluntary, on the other hand, it is clear that her health and personal welfare made it imperative for her to stop without further delay; in fact, the evidence indicates that had she not left her work after her collapse in May 1943, she would in all probability have been carried out of the plant on a stretcher. An act of necessity may not be a voluntary act. . . . We cannot escape the conclusion that where, as here, an employee is impelled because of sickness and disease to terminate employment because continuance thereof would endanger his health and personal welfare, such termination is an involuntary rather than a voluntary act on the part of the employee within the meaning of section 4337-27 (A)."⁴¹

Where, however, the sickness or other physical condition was not of such an impelling nature as to force resignation, so that the element of choice appeared to be present, the leaving is considered to be voluntary in nature. Cases of ordinary illness or leaving in order to effect an improvement in health fall within this category.⁴² In such cases, it becomes necessary to decide whether or not the condition causing the claimant to leave constituted good cause.

and children—the court pointed out that he had deliberately prolonged his stay in jail.

³⁹ *Vernon v. Bd. of Review, C.C.H., U.I. Serv., Pa.*, par. 8213 (1949).

⁴⁰ 219 Minn. 306, 18 N.W. 2d 249 (1945).

⁴¹ *Cf. Lafay v. Appeal Board, C.C.H., U.I. Serv., Mich.*, par. 1975.412 (1948); *Craig v. State*, 81 N.E. 2d 615 (Ohio App. 1948). The Ohio Board of Review has held that a claimant who left his employment because of a severe case of dermatitis, with secondary infection caused by the oil that he was required to use while performing his duties as a grinder, was involuntarily unemployed. Decision No. 700-B.R.-48; *C.C.H., U.I. Serv., Ohio*, par. 1975.10.

⁴² *Amherst Coal Co. v. Bd. of Review, C.C.H., U.I. Serv., W.Va.*, par. 1975.092 (1947); *State v. Bd. of Review, C.C.H., U.I. Serv., W.Va.*, par. 8081 (1948); *Riggs Motor Co. v. Empl. Security Comm., C.C.H., U.I. Serv., Wyo.*, par. 8063 (1947); *In re Bush*, 133 Pa. Super, 518, 3 A. 2d 211 (1938); *Lafay v. Appeal Board, C.C.H., U.I. Serv., Mich.*, par. 1975.412 (1948); *Craig v. State*, 81 N.E. 2d 615 (Ohio App. 1948).

Cases where the leaving was due to advanced stages of pregnancy have not been handled entirely in accordance with this distinction. In one,⁴³ it was said that the condition itself had been a matter of choice with the claimant. In others,⁴⁴ it was held that any separation not the result of a discharge is a voluntary leaving. The latter reasoning, of course, is highly questionable, and renders the term "voluntary" meaningless for all practical purposes. It is submitted that a sounder approach would have been to rest the decision on the extent to which the claimant's condition was considered compelling. In some cases, certainly, the claimant might have no choice if she valued her life or that of her child, although in others she might be physically able to continue almost up to the time of confinement. As in other cases of sickness or physical disability, the claimant would not be able to work, and therefore could not qualify for benefits, until she was back on her feet again and ready to return to work. Thereafter, the availability requirement offers sufficient protection.

In *Kalamazoo Tank & Silo Corp. v. U.C.C.*,⁴⁵ 53 claimants applied for unemployment insurance benefits for the period during which they were separated from their jobs because of a picket line in front of their employer's plant. The picket line was conducted by striking employees of a subsidiary concern, the Riverside Foundry and Galvanizing Company, which operated an adjoining plant, common entrances being maintained for both plants. There was evidence that some of the claimants had sought permission to cross the picket line and were refused; also, that one of them was picked up bodily when he attempted to cross the line and placed in his car. Under these circumstances, and in view of threats of bodily harm and the employer's failure to afford safe access, the Supreme Court of Michigan held that there had not been a voluntary leaving within the meaning of the Michigan act. An alternative ground for the same result, not mentioned by the court, would have been the fact that no severance of the employer-employee relation had occurred and therefore there had been no leaving.⁴⁶

Layoffs and plant shutdowns, rather naturally, are to be distinguished from a voluntary quit. Thus, in *Copper Range Company v. U.C.C.*⁴⁷ a mine shutdown by the employer after the union's refusal of a wage adjustment was held not to constitute a voluntary

⁴³ *Moulton v. Empl. Security Comm.*, 34 N.W. 2d 211 (Iowa 1948).

⁴⁴ *John Morrell & Co. v. U.C.C.*, 69 S.D. 618, 13 N.W. 2d 498 (1944); *Packard Motor Car Co. v. U.C.C. and Ruel, C.C.H., U.I. Serv., Mich.*, par. 1975.415 (1947).

⁴⁵ *C.C.H., U.I. Serv., Mich.*, par. 8240 (1949).

⁴⁶ *See, Yale & Towne M'fg Co. v. Board of Review, C.C.H., U.I. Serv., Pa.*, par. 8202 (1948).

⁴⁷ 31 N.W. 2d 692 (Mich., 1948).

leaving. In this case the Michigan Supreme Court considered and rejected the anomalous doctrine of constructive voluntary leaving.⁴⁸

Once it has been established that the claimant has left his job, and that he quit voluntarily, the final, and perhaps the most difficult, question is whether he had good cause for quitting. As already pointed out, some States provide specifically that the good cause must be connected with the claimant's work. It seems clear, and there is ample authority for the proposition, that without such a qualification the good cause may consist of reasonable or sufficient personal reasons.⁴⁹ As a result, it is extremely important, in considering existing precedents, to determine whether the statute involved in each instance contains the qualifying language.

It has been held that leaving work to take care of children after the husband's death,⁵⁰ or to take a sick wife back to her home community,⁵¹ is reasonable or compelling enough to constitute good cause. There is a rather sharp difference of opinion as to whether leaving simply to join one's husband or wife in another locality is a cause which is good enough, some saying yes⁵² and others holding that it is not.⁵³ But it seems to be agreed that leaving to get married is without good cause.⁵⁴

⁴⁸ *Cf.* *Rhea Mfg. Co. v. Industrial Commission*, 231 Wis. 643, 285 N.W. 749 (1939), where it was held that the claimant, who was not a member of the union, had not voluntarily quit when the employer discontinued the dress line on which she was working rather than accede to union demands.

⁴⁹ *In re Teicher*, 154 Pa. Super. 250, 35 A. 2d 739 (1944); *Barclay White Co. v. Board of Review*, 356 Pa. 43, 48, 50 A. 2d 336, 340 (1947); *Montgomery Ward & Co. v. Board of Review*, C.C.H., U.I. Serv., Ill., par. 1975.01 (1941); *Ben. Ser. 6577-III. (V4-10)*; *Craig v. State*, 81 N.E. 2d 615, 620-621 (Ohio App. 1948); *Hollingsworth Tool Works v. Review Board*, 84 N.E. 2d 895 (Ind. App., 1949); *Lancaster v. Empl. Sec. Bd.*, C.C.H., U.I. Serv., Md., par. 8101 (1949). *Contra*: *Woodmen of the World Life Insurance Society v. Olsen*, 4 N.W. 2d 923 (Neb. 1942).

⁵⁰ *Lancaster v. Employment Security Board* (Md. Cir. Ct., 1949), C.C.H., U.I. Serv., Md., par. 8101; *Accord*: *Mee's Bakery, Inc. v. Board of Review*, 162 Pa. Super. 183, 56 A. 2d 386 (1948), where the claimant quit after her transfer to the day shift because the change in hours prevented her from getting the family meals and made her hours the same as her husband's, who had been caring for the children while she was away at night.

⁵¹ *Hollingsworth Tool Works v. Review Board*, 84 N.E. 2d 895 (Ind. App. 1949).

⁵² *Montgomery Ward & Co. v. Board of Review* (Ill. Cir. Ct. 1941), C.C.H., U.I. Serv., Ill., par. 1975.01; *In re Teicher*, 154 Pa. Super. 250, 35 A. 2d 739 (1944).

⁵³ *Miami Broadcasting Co. v. Board of Review* (Fla. Cir. Ct., 1945), C.C.H., U.I. Serv., Fla., par. 1975.05; *Skupa v. Commissioner* (Neb. Dist. Ct., 1940), C.C.H., U.I. Serv., Neb., par. 1975.039 (1940) (husband quit to join wife in another state). See *Youngclaus v. Creswell*, C.C.H., U.I. Serv., Neb., par. 1996.01 (1941) (wife left to join husband in another city and it was held that she was not entitled to benefits under the special disqualification applicable to females whose jobs are discontinued on account of marriage).

Some State laws specifically provide that the same factors which determine the suitability of work offered are to be considered in deciding whether there is good cause for leaving. The factors most pertinent in connection with cases of leaving are: (1) the degree of risk to the claimant's health, safety, and morals, (2) his physical fitness for the job, (3) his prior training, experience and earnings, and (4) the distance of the work from his residence. Even without an express reference to good cause in the suitability definition, these factors should apply since it would be illogical, to say the least, to disqualify an individual for leaving work which, under the terms of the statute, he could refuse to accept, if offered by another, without affecting his benefit rights. It should also be recognized, however, that the factors listed are not exclusive.

Where the duties are too arduous or the job is shown to have an ill effect upon the claimant, it is generally recognized that there is good cause for quitting. Within this principle fall situations where the work load of the claimant has been increased,⁵⁵ the job involved a nervous strain,⁵⁶ the claimant's duties involved physical injury,⁵⁷ or the claimant was physically unable to do the job assigned.⁵⁸ In all these instances, of course, the cause for leaving was connected with the claimant's work. Changing jobs on the advice of one's physician has also been held to be a sufficiently good personal reason to avoid disqualification.⁵⁹

By way of contrast, quitting one job to accept another, to engage in self-employment, or merely to get a change of scenery, normally is considered neither to amount to good cause connected with claim-

⁵⁵ *S. S. Kresge Co. v. Unemployment Comp. Comm.*, 349 Mo. 590, 162 S.W. 2d 838 (1942); *In re Burkhart*, 158 Pa. Super. 564, 45 A. 2d 909 (1946). In the latter case, in the process of distinguishing the court's decision in the *Teicher* case, it was pointed out that there is no legal obligation to be married and that leaving in such a case is the result of a mere "impulse."

⁵⁶ *Gray v. Dep't of Ind. Relations, C.C.H., U.I. Serv., Ala.*, par. 8151 (1948). See *Henderson v. Dep't of Ind. Relations, C.C.H., U.I. Serv., Ala.*, par. 8159 (1949) (additional duties considered inconsequential).

⁵⁷ *Moore v. Greyhound Bus Co., C.C.H., U.I. Serv., Ala.*, par. 8132 (1944).

⁵⁸ *Sides v. Dep't of Ind. Relations, C.C.H., U.I. Serv., Ala.*, par. 8130 (1947).

⁵⁹ *Hoffstat v. Bd. of Review, C.C.H., U.I. Serv., Pa.*, par. 8212 (1949); *Plafchan v. U.C.C., C.C.H., U.I. Serv., Mich.*, par. 1975.84 (1947); *Hartford Finance Co. v. Mucha, C.C.H., U.I. Serv., Conn.*, par. 8169 (1947); *Alabama Mills, Inc. v. Brand, C.C.H., U.I. Serv., Ala.*, par. 8156 (1948); *Brashear v. Empl. Security Bd., C.C.H., U.I. Serv., Md.*, par. 8103 (1949).

⁶⁰ *Bliley Mfg. Co. v. Bd. of Review*, 158 Pa. Super. 570, 45 A. 2d 908 (1946). See *Craig v. B.U.C.*, 83 Ohio App. 247, 81 N.E. 2d 615 (1948), where fear of ill health, unsupported by medical evidence, was held not to be enough. (before good cause restricted by amendment). Illness which makes the place of employment untenable only for the particular claimant, however, is not considered connected with the work. *Armstrong v. Empl. Security Comm., C.C.H., U.I. Serv., Iowa*, par. 8101 (1948); *Lafay v. Appeal Bd., C.C.H., U.I. Serv., Mich.*, par. 1975.412 (1948).

ant's work⁶⁰ nor to good personal cause.⁶¹ When the new job fails to materialize or the new venture falls through and the individual finds himself without a job and tries to claim benefits, he is faced with disqualification. Such changes apparently are considered to be at the claimant's own risk.

Where the claimant was unable to earn adequate compensation on a piece-work basis at the scale set by the employer, she was held to have good cause for quitting,⁶² but the mere opinion or belief that one's salary is not high enough is not considered sufficient for this purpose.⁶³ A substantial alteration in the terms or conditions of employment may constitute good cause for quitting,⁶⁴ as where a claimant was changed to night work and her lunch period was shortened.⁶⁵ But where an addition to the claimant's work load was only temporary, he was not considered to have good cause for quitting,⁶⁶ and a claimant's refusal to transfer to other work for reasons which did not appear compelling resulted in disqualification.⁶⁷ With the possible exception of the last type of case, these were all instances where the cause was connected with the work, so that the differences in statutory language did not affect the result. It is interesting to note, however, that in several cases the claimant's own limitations were at least contributing factors.⁶⁸

⁶⁰ *County Mason Supply, Inc. v. Testa*, C.C.H., U.I. Serv., Conn., par. 8159 (1946) (claimant quit to take a new job); *Connecticut Doughnut Co. v. Gallo*, C.C.H., U.I. Serv., Conn., par. 8160 (1946) (claimant quit to go into business with another); *Elaber v. Dahl Publishing Co.*, C.C.H., U.I. Serv., Conn., par. 8207 (1948) (claimant wanted to move to property in a different town). Cf. *Kovach v. Appeal Board*, C.C.H., U.I. Serv., Mich., par. 8230 (1948) (claimant was held not to be disqualified for leaving one plant to accept a recall to another plant of the same employer).

⁶¹ *Ralph Printing Co. v. Kinney*, C.C.H., U.I. Serv., Neb., par. 1975.06 (1940) (claimant left to go to another State); *Sun Shipbuilding & Dry Dock Co. v. Board of Review*, 358 Pa. 224, 56 A. 2d 254 (1948), where the claimant left to engage in self-employment.

⁶² *Just v. American Hardware Corp.*, C.C.H., U.I. Serv., Conn., par. 1975.042 (1945). In a decision which amounts to the same thing, the Michigan Circuit Court held that a claimant had good cause for quitting where his employer failed to furnish sufficient work. *Johnson v. U.C.C.*, C.C.H., U.I. Serv., Mich., par. 1975.46 (1943).

⁶³ *Sweeney v. Murphy*, 262 App. Div. 846 (N.Y. 1944); *Kane v. Fafnir Bearing Co.*, C.C.H., U.I. Serv., Conn., par. 8197 (1948).

⁶⁴ *Amendola v. Administrator*, C.C.H., U.I. Serv., Conn., par. 8215 (1949).

⁶⁵ *Mitchell v. Commonwealth*, C.C.H., U.I. Serv., Mass., par. 1975.015 (1949).

⁶⁶ *Angerhofer v. Board of Review*, 163 Pa. Super. 134, 60 A. 392 (1943).

⁶⁷ *Edwards & Co. v. Appeal from Unemployment Commissioner*, C.C.H., U.I. Serv., Conn., par. 8184 (1948) (where the foreman of the new department made the claimant irritable and nervous, which the court considered a personal reason); *Collins Radio Co. v. Employment Security Commission*, C.C.H., U.I. Serv., Iowa, par. 1975.036 (1943) (where the claimant was to have been transferred from guard to janitorial duties at the same rate of pay).

⁶⁸ See *Just v. American Hardware Corp.*, C.C.H., U.I. Serv., Conn., par.

Minor misunderstandings or petty grievances which may cause a claimant to become disgruntled and result in his quitting normally do not furnish the good cause necessary to avoid disqualification. Where a structural steel designer quit following a disagreement over the method of performing his work, which he felt did not meet the standard code of structural engineers and designers, the Illinois Circuit Court affirmed a Board of Review decision holding that he did not have good cause for leaving.⁶⁹ A similar result was reached where the claimant quit because of a penalty imposed for being tardy,⁷⁰ because of criticism,⁷¹ because of a temporary suspension,⁷² or because of dissatisfaction with the employer's method of operation.⁷³ An accountant who felt that his work involved too many duties of a clerical nature was considered to have insufficient justification for quitting.⁷⁴ Claimant's dissatisfaction with working conditions, which were found to be customary, did not justify leaving where the statute specified that the good cause must involve fault on the part of the employer.⁷⁵

Losing one's regular means of transportation may be good personal cause for leaving,⁷⁶ but it is not considered to be connected with the work.⁷⁷ The anticipated need of joining a union is not good enough⁷⁸ and neither is a mistaken understanding of the employer's rule against marriage.⁷⁹

From a review of these authorities, it may be said that any

1975.042 (1945); *Mitchell v. Commonwealth*, C.C.H., U.I. Serv., Mass., par. 1975.015 (1943). Both decisions were favorable to the claimant notwithstanding the statutory restriction of good cause.

⁶⁹ *Vacek v. Division of Placement and Unemployment Compensation*, C.C.H., U.I. Serv., par. 8271 (1948) (good cause unrestricted).

⁷⁰ *White v. Review Board*, 114 Ind. App. 383, 52 N.E. 2d 500 (1944) (good cause unrestricted).

⁷¹ *Wolfe v. U.C.C.*, 232 Iowa 1254, 7 N.W. 2d 799 (1943) (good cause restricted).

⁷² *Richard v. Federal Cartridge Corp.*, 217 Minn. 136, 14 N.W. 2d 118 (1944) (good cause restricted).

⁷³ See *Brown-Brockmeyer v. Roach*, 148 Ohio St. 511, 76 N.E. 2d 79, 82 (1947) (good cause unrestricted at time of case).

⁷⁴ *In re Louis Smith*, C.C.H., U.I. Serv., N.Y., par. 8441 (1945) (good cause unrestricted).

⁷⁵ *Amherst Coal Co. v. Board of Review*, 35 S.E. 2d 733 (W.Va., 1945).

⁷⁶ *Sawyer Biscuit Co. v. Board of Review*, C.C.H., U.I. Serv., Ill., par. 1975.01 (1942).

⁷⁷ *Evans v. Alabama Power Co.*, C.C.H., U.I. Serv., Ala., par. 8140 (1947); *Malleable Iron Fittings Co. v. Hall*, 15 Conn. Super. 445 (1948); *Hatfield-Campbell Creek Coal Co. v. Board of Review*, C.C.H., U.I. Serv., W.Va., par. 1975.117 (1944).

⁷⁸ *Condon v. Worth's Inc.*, C.C.H., U.I. Serv., Conn., par. 1975.050 (1942) (good cause restricted).

⁷⁹ *Landro v. Kinney*, C.C.H., U.I. Serv., Neb., par. 1975.041 (1940) (good cause unrestricted).

reason which would normally cause a reasonable person to leave his work will be held to furnish the good cause necessary to avoid the application of the voluntary quit disqualification. As one court has put it, the reasons must be compelling, i.e., real not imaginary, substantial not trifling, reasonable not whimsical.⁸⁰ Some uncertainty is bound to exist, however, as to the standards of reasonableness which will govern the judgment of the particular tribunal.

The pregnancy and family obligation cases illustrate quite clearly the effect of special disqualification provisions or language expressly restricting good cause. Pregnancy, for instance, is a condition which, even if it did amount to good cause for leaving, is clearly not attributable to the employer.⁸¹ Marital or family obligations likewise are considered to have no connection with the work,⁸² and in some States specific disqualifications apply to such cases.⁸³ These precedents, like some of the others already mentioned, are in no sense authority for what constitutes good cause.

To support a determination that the cause for leaving is attributable to the employer or connected with the work, it should not be necessary to find that the employer has been negligent or in any other way to blame. It is sufficient if there is good cause arising out of the job itself as distinguished from factors outside of the job and having no necessary relation thereto. This point is well explained by the following language of the Supreme Court of Minnesota in the Fannon⁸⁴ case:

As we construe the law, the legislature did not intend that some wrongful act or negligence be first established by a claimant before termination of his employment on account of sickness or disease directly connected therewith could be said to be for 'good cause attributable to the employer.' Rather, we feel the legislature intended that, where factors or circumstances directly connected with employment result in illness or disease to an employee and make it impossible for him to continue therein because of serious danger to his

⁸⁰ *Bliley Electric Co. v. Board of Review*, 158 Pa. Super. 548, 45 A. 2d 898 (1946), quoted with approval in *Barclay White Co. v. Board of Review*, 56 Pa. 43, 50 A. 2d 336 (1947).

⁸¹ *Moulton v. Employment Security Commission*, C.C.H., U.I. Serv., Iowa, par. 8090 (1947).

⁸² *Ex parte Alabama Textile Corp.*, 242 Ala. 609, 7 So. 2d 303 (1942); *Huiet v. Schwob Mfg. Co.*, 27 S.E. 2d 743 (Ga. 1943); *Davis v. Employment Security Commission*, C.C.H., U.I. Serv., Iowa, par. 8078 (1944); *Courney v. Appeal Board*, C.C.H., U.I. Serv., Mich., par. 1975.31 (1945).

⁸³ The Ohio law, for instance, disqualifies any individual who has "quit work to marry or because of marital, parental, filial, or other domestic obligations." OHIO GEN. CODE, § 1345-6-d(7). See *Farloo v. Champion Spark Plug Co.*, 145 Ohio St. 263, 61 N.E. 2d 313 (1945); *Moore v. B.U.C.*, 73 Ohio App. 362, 56 N.E. 2d 520 (1943).

⁸⁴ *Fannon v. Federal Cartridge Corp.*, 219 Minn. 306, 18 N.W. 2d 249, 252 (1945).

health, termination of employment for this reason may correctly be said to be involuntary and for 'good cause attributable to the employer,' even though the employer be free from all negligence or wrongdoing in connection therewith.

CONCLUSION

The discharge for misconduct and voluntary quit provisions are, after all, simply common sense limitations upon the risks which the unemployment insurance account is designed to cover. In this respect they are just like the other eligibility and disqualification provisions referred to in the introduction. In general, they are similar to the conditions of an ordinary insurance policy. As nearly as possible they should be given effect according to the express terms of the particular statute, and care should be exercised to apply only the condition or conditions pertinent to the established facts of the particular case.

There is a tendency in some of the cases to read into the State acts a general requirement that the unemployment, to be compensable, must be entirely involuntary⁸⁵ or in some way the fault of the employer.⁸⁶ This, it is submitted, is a highly questionable procedure, particularly where it ignores the express language of the applicable conditions. Where there is room for judgment in the interpretation of the legislative terms, or in the application of those terms to the particular facts, it would be much more appropriate to consider the general welfare aspects of the unemployment insurance program and to bear in mind the liberal construction which is normally accorded legislation of this nature.

⁸⁵ See Harrison, *Statutory Purpose and Involuntary Unemployment*, 55 YALE L. J. 117 (1945).

⁸⁶ See Simrell, *Employer Fault vs. General Welfare as the Basis of Unemployment Compensation*, 55 YALE L. J. 181 (1945).